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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its September 8, 2009 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

**CLOSED SESSION**

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## CASES FOR SUMMARY HEARING (11)

**ALLEGATIONS, FINDINGS & RATIONALE****08-068**

1. Misconduct/Procedure – Deputy 1 “lost” the complainant’s written account of a battery and then failed to read a second report that was submitted.

Finding: Not Sustained

Rationale: Deputy 1 denied “losing” the complainant’s information. He said e-mail correspondence was attached to his report that was submitted to the District Attorney’s Office. When a second request was made for the same information, Deputy 1 contacted the complainant and requested that he resend the electronic messages. There was insufficient evidence to either prove or disprove the allegation.

2. False Arrest – Deputy 1 arrested the complainant for Battery on February 7, 2007 when he was the victim, not the batterer.

Finding: Action Justified

Rationale: The complainant was identified by four victim/witnesses as the suspect in a battery. The complainant, who left the scene prior to arrival by law enforcement, was not interviewed until a week later, at which time he stated he was the victim. Deputy 1 wrote a crime report that was submitted to the District

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Attorney's Office, which issued a warrant for the complainant's arrest as the batterer. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

3. Criminal Conduct – Deputy 1 gave false testimony by identifying the complainant in a video.

Finding: Action Justified

Rationale: Due to crimes committed against their property, the victims installed security cameras to obtain surveillance videotape. After an act of vandalism, the victims and Deputy 1 reviewed the videotape and believed the complainant was responsible. Deputy 1 said he testified at court that the suspect in the video appeared to him to be the complainant. The complainant was convicted following a trial. There was no evidence submitted by the complainant or uncovered through investigation that supports the allegation. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

4. Criminal Conduct – Deputy 1 falsely testified against the complainant in exchange for sexual favors from the complainant's ex-girlfriend, a "known prostitute."

Finding: Not Sustained

Rationale: The complainant's ex-girlfriend admitted in court that she obtained money for sexual services and is documented as a prostitute by the Sheriff's Department. Deputy 1 denied the allegation but admitted a single, non-sexual off-duty contact with the woman. The woman could not be located to question in this investigation. The complainant was convicted following a trial. Off-duty conduct is outside the Review Board's jurisdiction, and this allegation was referred to the Sheriff's Department for follow-up. There was no evidence submitted by the complainant or uncovered through investigation that supports the allegation. There was insufficient evidence to either prove or disprove the allegation.

5. Criminal Conduct – Deputies 1, 2 and/or 3 obstructed justice, falsified police reports, and committed perjury.

Finding: Not Sustained

Rationale: One of the persons identified by the complainant is a law enforcement officer from another agency that is outside the Review Board's jurisdiction. There was no evidence submitted by the complainant or uncovered through investigation that supports the allegation regarding the named Sheriff's deputies. Responsibility lies with the District Attorney's office to issue charges and the court system to find law enforcement officers in violation of criminal conduct. There is insufficient evidence to either prove or disprove the allegation.

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## **08-070**

1. False Arrest – Deputy 1 arrested the complainants for wire tapping without probable cause.

Finding: Action Justified

Rationale: The complaints were involved in bitter and long-running litigation with their next-door neighbors over HOA and easement rights. Deputy 1 investigated the neighbors' reports of hearing the complainants on their phone line. The complainants reported no problem with their phone. A site examination by phone company experts showed a wire tap from the neighbors' phone line to the complainants' garage, creating an unauthorized extension of the neighbors' phone line. Deputy 1 arrested the complainants after executing a search warrant ordered by a judge. Fearing reprisal for the arrests, the neighbors obtained a temporary restraining order against the complainants and other HOA members from a judge. After a two-day hearing with testimony from the complainants, other HOA members and the neighbors, the judge denied the neighbors' request to make the TRO permanent. The judge found the neighbors did not meet a clear and convincing evidence standard and that one neighbor's testimony about vandalism and threats of violence was not credible. Soon after, the District Attorney's Office dismissed the wiretap case against the complainants. The complainants deny tapping their neighbors' phone line, believe they were "set up," and blame Deputy 1. An arrested person's dispute of evidence and a prosecutor's discretionary decision not to prosecute do not equate to misconduct or a poor performance by the investigating deputy. An examination of evidence – motive,

opportunity, and the phone company's conclusion based on physical evidence-- showed probable cause to believe a crime had been committed and that the complainants were responsible. Deputy 1's arrests of the complainants, though disputed by and stressful for the complainants, were lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 conducted a biased and incomplete investigation of the complainants.

Finding: Action Justified

Rationale: The complainants believe they are more credible than the neighbors who reported the wiretap and dispute the evidence gathered by Deputy 1. Deputy 1, who had first-hand contact with the complainants and the neighbors, denied bias against the complainants or for the complainants. There was no evidence produced by the complainant or this investigation that showed Deputy 1's investigation was incomplete. Deputy 1's conduct was lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 1 relied on incomplete information to obtain a search warrant.

Finding: Action Justified

Rationale: Phone company experts examined the utility box serving the complainants and the neighbors and found an illegal and unauthorized connection from the neighbors' phone line to the complainants' garage. Deputy 1 also reviewed service history for the tapped line with the same phone company experts. After a review of this and other evidence, a judge issued a search warrant. Deputy 1's actions were lawful, justified, and proper.

4. Excessive Force – An unidentified deputy pointed his gun skyward during the complainants' arrests.

Finding: Summary Dismissal

Rationale: An involved deputy could not be identified based on the description provided or Department records. There is insufficient basis to investigate this allegation further.

5. Misconduct/Procedure – Unidentified deputies handcuffed and guarded the complainants for more than two hours while their home was searched and photographed.

Finding: Action Justified

Rationale: Search warrant subjects and arrestees are routinely detained and/or handcuffed for the safety of the law enforcement officers executing a search warrant and to prevent destruction of evidence. The actions of involved deputies were lawful, justified and proper.

6. False Arrest – Deputy 1 arrested one of the complainants without probable cause for a December 2006 assault with a deadly weapon that was not prosecuted.

Finding: Action Justified

Rationale: A neighbor and a companion gave statements that one of the complainants tried to run them over with her car. The complainant denies having done so. Deputy 1 had probable cause to believe the complainant committed a crime and arrested her, along with the wiretap charge, within the statute of limitations. Deputy 1's actions were lawful, justified and proper.

7. Misconduct/Discourtesy – Deputy 1 “verbally abused” the complainants’ son and told him, “Your parents are guilty and are going to jail.”

Finding: Not Sustained

Rationale: The complainants’ son clarified that Deputy 1 told him, “Your parents committed a crime and are going to jail.” Deputy 1 denied verbally abusing the complainants’ son. This allegation is subjective, and there was insufficient evidence to prove or disprove the allegation.

8. Misconduct/Procedure – Deputy 1 recommended that victims obtain a restraining order against the complainants, which was subsequently denied by a judge.

Finding: Action Justified

Rationale: Protective orders are available to any person for harassment and threats to safety. Applications are reviewed by judges, who exercise their discretion to issue temporary and permanent orders when statutory requirements are met. Deputy 1 recommended a restraining order for the next door neighbors, who said they feared reprisal for the complainants' arrests. His actions were lawful, justified and proper.

9. Misconduct/Procedure – Deputy 1 failed to return the complainants' confiscated items in a timely manner following the dismissal of criminal charges.

Finding: Action Justified

Rationale: The complainants said Deputy 1 returned their property within a month after the District Attorney dismissed charges against them, which evidence confirmed. There is no statutory or procedural time frame for returning seized property, which in this case was stored in different locations. Deputy 1 denied a deliberate delay. His actions were lawful, justified and proper.

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#### **08-078**

1. Criminal Conduct/Trespass – Deputies 1 and 2 trespassed into the complainant's unguarded, gated community.

Finding: Summary Dismissal

Rationale: Deputies did not "trespass" when they twice attempted to serve the complainant with a court-issued Temporary Restraining Order. Peace officers are not subject to trespass laws when performing their duties, such as investigating crimes, responding to calls for service, or serving restraining orders. Even if they were, a trespass violation requires a request to leave and a refusal to leave. (Penal Code §§ 602(o) and 602.5) The complainant did not ask deputies to leave his property because he admittedly remained inside his house when they came to his door. This complaint clearly lacks merit.

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#### **08-093**

1. Misconduct/Procedure – Deputy 1 refused to provide the complainant with a report documenting deputies' entry to his house.

Finding: Action Justified

Rationale: No report was generated to document a brief welfare check of the complainant's home, although an event number was routinely assigned by the Communications Center. A neighbor asked the Sheriff's Department to check the complainant's house because his front door had blown open in the wind, he hadn't been seen in several days, didn't answer his doorbell, and his dog appeared to need food, water, and shelter. A deputy responded, found no evidence of a crime and secured the residence. The deputy's actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 refused the complainant's request to have a burglary report taken.

Finding: Action Justified

Rationale: According to the deputy who checked the complainant's house, there was no evidence of a crime to document. The complainant confirmed nothing was missing from his home. The matter was properly referred for follow up to the sergeant who supervised the responding deputy and who had attempted to return the complainant's calls but got busy signals. Deputy 1's conduct was lawful, justified, and proper.

3. Misconduct / Discourtesy – Deputy 1 twice hung up on the complainant.

Finding: Action Justified

Rationale: An audio tape of the complainant's calls to the Sheriff's Communications Center showed he was angry that a deputy did a welfare check on his home, that the deputy, sergeant, lieutenant, and captain did not return his calls, and that a deputy was not available to take a burglary report by phone. The complainant argued

with, talked over, and verbally abused call takers in six calls made over five hours. Deputy 1, the night shift supervisor tasked with handling the complaint, spoke to the complainant by phone twice. In one conversation, Deputy 1 stated the complainant hung up. In the other, Deputy 1 admittedly told the complainant the conversation was going nowhere and terminated the call: he had repeatedly assured the complainant that the responsible day shift supervisor would follow up the next day and the complainant became argumentative and compared the Sheriff's Department to the Gestapo. Deputy 1's conduct was lawful, justified and proper in these circumstances.

4. Misconduct/ Procedure – Deputy 2 refused to provide the complainant with a report documenting deputies' entry to his house.

Finding: Summary Dismissal

Rationale: Deputy 2 retired from the Department and is no longer subject to the Review Board's jurisdiction. A review of Department records showed that deputies responded to the complainant's home the next day to re-check his house and again found no signs of forced entry or property damage/loss, consistent with the complainant's statement that nothing was missing.

5. Misconduct/ Procedure – Deputy 2 refused to have a burglary report taken, telling the complainant that burglaries were "low priority" and giving him the impression that deputies would respond only when there was forced entry.

Finding: Summary Dismissal

Rationale: Deputy 2 retired from the Department and is no longer subject to the Review Board's jurisdiction. A review of Department records showed that deputies responded to the complainant's home the next day to re-check his house and again found no signs of forced entry or property damage/loss, consistent with the complainant's statement that nothing was missing.

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## **09-021**

1. Death Investigation/Inmate Suicide – Deputies 1 and 2 completed a security check and exited Module 3A, whereupon inmate Kopkowski climbed onto the top railing of the upper tier and dove headfirst to the ground below, where he was discovered by Deputy 3.

Finding: Action Justified

Rationale: Deputies and medical personnel responded to a call of "man down," and resuscitative efforts were performed until death was pronounced. The cause of death was blunt force head injuries, and the manner of death suicide. The evidence shows the deputies' conduct was lawful, justified and proper.

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## **09-022**

1. Death Investigation/Inmate Suicide – Deputy 1 found an inmate unresponsive in his cell.

Finding: Action Justified

There was no allegation of misconduct. Jurisdiction was invoked under Article XVIII, Sections 340.9 (b) of the San Diego County Administrative Code, which authorizes the Review Board to investigate in-custody deaths without a complaint. No evidence of wrongdoing by sworn staff was found. The evidence showed that other inmates housed with and close to the decedent provided him with doxepine, an anti-depressant medication prescribed for them as sleeping pills. These inmates hoarded the pills in defiance of the jail's "watch take" program, in which medical staff members watch inmates take their prescribed medication. The decedent, facing spending the rest of his life in prison if convicted on several counts of molesting young girls, including his daughters, committed suicide by ingesting a lethal amount of doxepine. The actions of deputies were lawful, justified and proper.

### **09-036**

1. Misconduct/Procedure - Deputy 1 improperly assisted the complainant, causing pain.

Finding: Summary Dismissal

Rationale: There was no deputy with the name provided by the complainant working in the jail. The complainant did not respond to requests to provide additional information to enable identification of an involved deputy. There is an insufficient basis to investigate further.

2. Misconduct/Discourtesy - Deputy 1 called the complainant a “faker” after the complainant complained of pain.

Finding: Summary Dismissal

Rationale: There was no deputy with the name provided by the complainant working in the jail. The complainant did not respond to requests to provide additional information to enable identification of an involved deputy. There is an insufficient basis to investigate further.

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### **09-056**

1. Misconduct/Procedure: Deputy 1 tortured the complainant through “electromagnetism,” the practice of using a heart rate monitor and a computer to capture and decipher his brain waves.

Finding: Summary Dismissal

Rationale: Brief investigation showed the complaint clearly lacks merit.

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### **09-072**

1. Misconduct/Procedure - Deputy 1 failed to arrest a juvenile and his mother after the juvenile grabbed and pushed down the complainant’s minor son and called him a “Nigga.”

Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction because the complaint was received more than one year after the incident that gave rise to the complaint. However, a review of Department records showed deputies investigated and arrested a juvenile for assault of the complainant’s minor son.

2. Discrimination/Racial - Deputy 1 did not write a report of the incident to forward to the District Attorney’s Office because the complainant and her son are African Americans.

Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction because the complaint was received more than one year after the incident that gave rise to the complaint. However, a review of Department records showed deputies investigated and arrested the juvenile for assault of the complainant’s minor son. Disposition of the case is unknown.

3. Misconduct/Intimidation - Deputy 2, stating that maybe he should arrest her minor son for starting the altercation, “intimidated” the complainant into “not pushing” the assault of her son by an older boy.

Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction because the complaint was received more than one year after the incident that gave rise to the complaint.

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## **09-075**

1. Misconduct/Procedure - Deputy 1 deputy required the complainant, in jail and awaiting arraignment on a felony threat charge, to provide a DNA sample, even though he had not been formally charged and was later released without prosecution.

Finding: Action Justified

Rationale: Effective January 1, 2009, Penal Code Section 296(a)(2)(C) requires DNA from every adult arrested on a felony. Penal Code Section 298 and Section 1059 of Title 15, California Code of Regulations, require deputies to collect DNA using a cheek swab. The complainant had been arrested and jailed on the felony charge of threatening to kill his son's mother and her boyfriend in violation of Penal Code Section 422. He was not prosecuted and was released. The complainant was required to provide and deputies were required to collect a DNA sample while the complainant was in jail. Deputy 1's actions were lawful, justified and proper.

2. Misconduct/Intimidation - Deputy 2 told the complainant if he did not allow his mouth to be swabbed for DNA, deputies would hold him down, DNA would be taken by needle, and he would be charged with a new crime.

Finding: Action Justified

Rationale: Penal Code Section 298.1(a) makes it a misdemeanor crime for an inmate to refuse to provide DNA. Penal Code Section 298.1(b)(1) and Section 1059 of Title 15, California Code of Regulations, authorize deputies to use reasonable force if necessary to collect DNA from an inmate who refuses to voluntarily provide DNA. A Watch Commander may authorize deputies to use of reasonable force if necessary and a phlebotomist to take a DNA blood sample from a refusing inmate. Deputy 2's actions were lawful, justified and proper.

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## **09-083**

1. Excessive Force - Deputy 1 dragged, kicked and slammed the aggrieved person's face against a wall in jail, causing bruising.

Finding: Not Sustained

Rationale: There was no record of a use of force incident during the 26 hours the aggrieved person was in jail. The aggrieved person, who described himself as "incapacitated" while in jail because of drug withdrawal, was unable to provide sufficient information to identify involved staff. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Medical - Unidentified professional staff did not provide needed psychiatric medication to the aggrieved person in jail, even though his psychiatrist faxed over a prescription, resulting in the aggrieved person getting into an altercation with deputies and suffering from withdrawal and dehydration.

Finding: Summary Dismissal

Rationale: The Review Board has no jurisdiction over complaints involving jail medical personnel or issues, only over complaints involving Sheriff's deputies and Probation officers employed by the County of San Diego. (County Charter § 606 (f)(1); San Diego County Administrative Code, Article XVIII, §§ 340, 340.9 (a)) The complainant was referred to the Internal Affairs Unit of the San Diego Sheriff's Department. The Review Board lacks jurisdiction.

3. Misconduct/Procedure - Deputy 1 released the aggrieved person from jail without his shirt.

Finding: Action Justified

Rationale: According to the aggrieved person and jail booking records, the aggrieved person was shirtless and wearing only pants and slippers when arrested and booked. He was released from jail the same way. The evidence showed the alleged act occurred but was lawful, justified, and proper.

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*Carol A. Trujillo*

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Executive Officer

CAT/amb